



Military & Veteran Affairs Committee

**Wednesday, March 15, 2006
3:15 PM – 5:30 PM
24 HOB**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Military & Veteran Affairs Committee

Start Date and Time: Wednesday, March 15, 2006 03:15 pm

End Date and Time: Wednesday, March 15, 2006 05:30 pm

Location: 24 HOB

Duration: 2.25 hrs

Consideration of the following bill(s):

HB 1007 State Parks by Proctor

Consideration of the following proposed committee bill(s):

PCB MVA 06-01 -- Disturbance of Assemblies

Presentation:

Overview of Florida National Guard Activities - Adjutant General Douglas Barnett

NOTICE FINALIZED on 03/13/2006 13:06 by Welcher.Stephanie

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

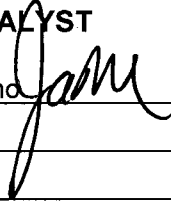
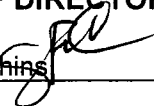
BILL #: HB 1007

State Parks

SPONSOR(S): Proctor

TIED BILLS:

IDEN./SIM. BILLS: SB 1638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Military & Veteran Affairs Committee		Marino 	Cutchins 
2) Tourism Committee			
3) Agriculture & Environment Appropriations Committee			
4) State Administration Council			
5) _____			

SUMMARY ANALYSIS

House Bill 1007 allows active members of the Florida National Guard, and their spouses and minor children, free state park admission.

The revenue impact to the Division of Recreation and Parks is estimated to be a loss of approximately \$100,621. The Division, however, estimated a higher impact in its analysis.

The impact to the state from lost sales tax revenue from annual pass sales is indeterminate and expected to be minimal.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families – House Bill 1007 benefits families of Florida National Guard members by allowing them to visit state parks together for free.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Under the Florida Department of Environmental Protection, the Division of Recreation and Parks operates and maintains 159 state parks, which cover 723,852 acres, with operating and capital budgets totaling around \$105 million¹. Park revenues during that time were approximately \$36.77 million. Park admittance fees are the parks' sole source of revenue and are used to pay salaries and other operating costs. Budgetary shortfalls are covered by funds from the Land Acquisition Trust Fund.

In 2004-2005, 17.3 million people visited Florida's state parks, down from a record attendance year in 2003-2004 of 19.1 million². The Division attributed the decrease in attendance to the effects of the above normal hurricane activity that year.

Entrance or admission fees to state parks is charged per carload (up to eight people), and the amount of the fee is based upon the park to which visitors are entering. Park admission fees can range from \$3 to \$5. Individuals may purchase an annual pass if they visit the parks frequently at a cost of \$43.40 (sales tax included), and families may purchase an annual pass for \$85.80 (sales tax included). Approximately 31,900³ annual passes were sold in 2004-2005.

Concerning military families, according to the Division, "Florida Park Service already allows the military free (state) park admission when requested⁴." The Division further confirmed that this "unwritten policy⁵" extends to all military personnel, which includes active duty, reservists, and National Guardsmen, and that the military personnel usually call ahead or show ID at the entry point in order to take advantage of this policy.

Effect of Proposed Changes:

House Bill 1007 appears to codify part of an existing policy within the Division of Recreation and Parks by allowing active members of the Florida National Guard (FNG), and their spouses and minor children, free state park admission. This bill does not affect active duty and reserve members of the armed forces who would continue to pay for park entrance or be able to take advantage of the "unwritten policy" stated above. This bill does not waive fees that entrants would pay for services such as overnight parking or renting campsites.

This bill takes effect July 1, 2006.

¹ Communication with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. Division of Recreation and Parks: Historical Data. February 23, 2006. Email on file with Committee on Military & Veteran Affairs.

² ib id.

³ Communication with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. February 22, 2006. Email on file with Committee on Military & Veteran Affairs.

⁴ Department of Environmental Protection. Draft Bill Analysis 2006: HB 1007. March 10, 2006. On file with Committee on Military & Veteran Affairs.

⁵ Conversation with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. March 10, 2006.

C. SECTION DIRECTORY:

- Section 1. Creates an undesignated section in the law that allows active members of the FNG, and their spouses and minor children, to gain entry to a state park without paying the admission fee.
- Section 2. Provides that this act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The potential loss to the Division of Recreation and Parks, using a simple average method, is approximately \$100,621 if every FNG individual or family generated four carloads a year.

The state may lose an indeterminate and minimal amount of sales tax from lost annual pass sales (\$5.80 per family annual pass and \$3.40 per individual annual pass).

Considering, however that the "unwritten policy" does exist, the actual revenue impact could be considerably lower.

The Division estimates a revenue impact of \$1.2 million⁶. However, they assumed that the current FNG strength was 15,000 and that each FNG would be equivalent to the loss of the \$80 family annual pass. Demographic analysis shows approximately 57.7% of FNG members have family responsibilities, so the remaining 42.3% would be more likely to purchase the \$40 individual annual pass under the Division's assumptions.

2. Expenditures:

There are no known or expected fiscal impacts on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A family of an active FNG member could save \$85.80 (sales tax included) per year if they normally purchased an annual pass, or they could save \$3, \$4, or \$5 per visit, depending on the park, if they were not on an annual plan.

An active FNG individual could save \$43.40 (sales tax included) per year if they normally purchased an annual pass, or they could save \$3, \$4, or \$5 per visit, depending on the park, if they were not on an annual plan.

D. FISCAL COMMENTS:

⁶ Department of Environmental Protection. Draft Bill Analysis 2006: HB 1007. March 10, 2006. On file with Committee on Military & Veteran Affairs.

Some assumptions are necessary to calculate the \$100,621 fiscal impact on the Division's revenue.

Staff assumes that:

- The unwritten policy does not exist; and
- The average revenue per visitor is \$2.13, which was calculated by dividing total revenue (\$36,766,200) in 2004-2005 by total visitors (17,296,273) in 2004-2005; and
- The number of unique FNG carloads corresponds to the current strength of the FNG (11,810⁷); and
- Each unique carload visits a state park four times in a year; and
- The percent of annual passes is negligible to the calculations, since if all 31,900 annual pass visitors made 20 trips (approximate number of trips necessary to gain full value of pass cost) to the parks that would only be about 3% of the total 17.3 million visitors.

Therefore, the number of unique carloads multiplied by four visits in a year multiplied by the average revenue per visitor equals approximately \$100,621⁸.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

There do not appear to be any constitutional issues with this bill.

B. RULE-MAKING AUTHORITY:

This bill does not appear to grant any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not Applicable.

⁷ Conversation with Glenn Sutphin, Legislative Director Florida Department of Military Affairs. January 12, 2006.

⁸ (11,810 x 4 x \$2.13)

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 1007

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Military & Veteran Affairs
Representative(s) Proctor offered the following:

Amendment (with title amendment)

Remove line(s) 12 and insert:
park upon submission of a valid active Florida National Guard
member or dependent identification card.

===== T I T L E A M E N D M E N T =====

Remove line(s) 4 and insert:
members free entrance to state parks; providing for presentation
of valid identification card as a condition for free entrance;
providing an

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HB 1007

2006

A bill to be entitled

An act relating to state parks; providing members of the Florida National Guard and certain relatives of such members free entrance to state parks; providing an effective date.

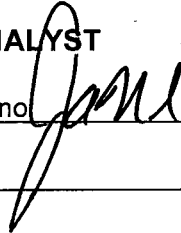
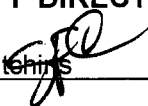
Be It Enacted by the Legislature of the State of Florida:

Section 1. A person who is a member of the Florida National Guard, and the spouse and minor children of such a person, shall not be charged a fee for admission to a state park.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB MVA 06-01 Disturbance of Assemblies
SPONSOR(S): Military & Veteran Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Military & Veteran Affairs Committee		Marino 	Cutcher 
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Proposed Committee Bill MVA 06-01 amends Florida's current prohibition against disturbing lawful assemblies by providing a higher level of penalty for disturbing the particularly sensitive assembly of individuals gathered to give military honors to a fallen veteran.

This PCB also reenacts s. 871.02, F.S., which provides the mechanisms for prosecuting violators of s. 871.01, F.S.

This PCB takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families – This Proposed Committee Bill serves to benefit families of certain deceased veterans by providing protection for a disturbance-free, dignified funeral service.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Section 871.01: Disturbances Statute Upheld

Section 871.01, F.S., reads, "Whoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose shall be guilty of a misdemeanor of the second degree..." The Supreme Court of Florida upheld the law's constitutionality in S.H.B. v. State of Florida¹.

In this case, the appellant, a juvenile, caused a disturbance at his junior high school when he ran through the hallways and yelled obscenities at a teacher who confronted him. Other students crowded the doors in their classrooms to see the activity in the hallways. The Court noted that the appellant's acts caused a disturbance and that "a disruption of the school's functions did, in fact, occur."

The appellant, however, challenged the law's constitutionality on two points: 1) that the statute was overbroad; and 2) that the First Amendment to the U.S. Constitution protected the appellant's activity.

In its decision, before it spoke to the two points concerning constitutionality, the Court addressed another one of the appellant's arguments that s. 871.01, F.S., and 877.03, F.S.², the "breach of peace" statute, are analogous and that he should therefore be judged under the standards of s. 877.03, F.S.

The Court disagreed and said that s. 871.01, F.S., is supplementary to and not a rephrasing of s. 877.03, F.S. The Court noted that, "Section 871.01 is a more explicit statute dealing with a particular kind of disturbance, i.e., the disturbance of a lawful assembly. ... It recognizes and provides penalties for the deliberate disruption of a peaceful and lawful assembly."

The Court continued and described the special character of these assemblies and said, "These functions are fragile by their nature. They generally require a degree of restraint and cooperation to produce the harmony necessary for their effectiveness. Thus, they are highly vulnerable to disturbance. A single person may cause havoc in a situation in which hundreds of others have sought a common purpose." Therefore, certain acts that may be tolerable in the general public realm may not be tolerable in situations involving these assemblies or functions.

The Court then segued into the first point made by the appellant, that the statute is overbroad and should be constitutionally void. Although s. 871.01, F.S., is widely protective, the Court stated,

¹ S.H.B. v. State of Florida, 355 So.2d 1176 (Fla. 1978)

² Section 877.03, F.S. -- Breach of the peace; disorderly conduct.—Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upheld in White v. State of Florida, 330 So.2d 3 (Fla. 1976).

“Because of the innumerable situations and types of conduct involved, the question of what conduct [constitutes an interruption or disturbance] must be determined largely on a case-by-case basis³.”

The Court further held that, “Since it is impossible to predict the type of behavior a person might use to cause a disruption, the statute cannot be more specific.” The Court decided that a jury should make an initial determination, based on the facts of a case, whether or not s. 871.01, F.S., was violated, and it affirmed that the statute was not overbroad.

Regarding the First Amendment issue raised by the appellant, the Court said, “As the appellant notes, mere words, when used as a tool of communication, are constitutionally protected. But the protection fails when, by the manner of their use, the words invade the right of others to pursue their lawful activities.” The Court noted the appellant’s conduct consisted of loud obscenities, running though the junior high while school was in session, and disobedience of lawful and reasonable requests of school officials for the conduct to stop. The Court concluded that the First Amendment did not protect the appellant’s activities and that he did in fact violate s. 871.01, F.S.

The Court upheld s. 871.01, F.S., against the argument that the statute is analogous to the “breach of peace” statute, and against the constitutional challenges that the statute is overbroad and violates the First Amendment.

Regarding certain functions that may currently fall under the protection of s. 871.01, F.S., funerals appear to fall under the provisions of this statute, and two considerations need to be addressed. First, since s. 871.01, F.S., protects “any assembly of people met...for any lawful purpose,” it appears funerals fit this description. Second, in its decision in S.H.B. v. Florida, the Court noted the “fragile...nature” of such assemblages, and again, funerals appear to suit this consideration.

Military Funeral Honors for Any Veteran

The United States created a program that provides special recognition for veterans upon their death. The “Honoring Those Who Served” Program directs the Secretary of Defense to provide special Military Funeral Honors⁴ for any⁵ deceased veteran⁶ upon his or her family’s request. The codification of special funeral honors for deceased veterans by the United States Government recognizes both the special nature of their service and sacrifices while defending the country and the opportunity for such recognition at the time of their death.

The minimum requirements⁷ for Military Funeral Honors under the law are:

- A funeral honors detail with at least two persons from the armed forces in proper uniform, with at least one of those persons from the deceased veteran’s armed force⁸; and
- A ceremony that includes the playing of Taps by a bugler or recorded version followed by the folding and presentation of a United States flag to the decedent’s family.

The Department of Defense (DOD) has additional honors, such as, but not limited to, a firing party, which may augment the minimum requirements.

³ Next, the Court said that, generally, the case-by-case determination on whether or not a disturbance occurred would be made at the trial level.

⁴ Title 10 U.S.C. s. 1491(a).

⁵ Title 10 U.S.C. s. 985(a) provides certain exceptions to “any” veteran such as, but not limited to, a veteran convicted of a federal or state capital crime.

⁶ Title 10 U.S.C. s. 1491(h) defines veteran under this section as “a decedent who – (1) served in the active military, naval, or air service (as defined in section 101(24) of title 38) and who was discharged or released therefrom under conditions other than dishonorable; or (2) was a member or former member of the Selected Reserve described in section 2301(f) of title 38.”

⁷ Title 10 U.S.C. s. 1491(b) and (c).

⁸ The other members of the funeral detail may be retired military persons or members of veterans organizations.

An eligible deceased veteran's family may request a funeral with military honors by contacting their funeral director or a local veterans organization. In addition, DOD maintains a website (www.militaryfuneralhonors.osd.mil) to assist the public with Military Funeral Honors.

Over the last few years, according to numerous news accounts, protestors have been targeting certain high-profile funerals with pickets and sloganeering. More recently, these protestors have been organizing their protests at funerals honoring the nation's fallen veterans. This has prompted many states, such as Oklahoma, Missouri, Indiana, Nebraska, South Dakota, Illinois, Kansas, Iowa, Mississippi, Virginia, Wisconsin, Tennessee, Kentucky, and West Virginia, to name a few, to enact or propose legislation to address protests at funerals.

Effect of Proposed Changes:

Proposed Committee Bill (PCB) MVA 06-01 amends Florida's current prohibition against disturbing lawful assemblies by providing a higher level of penalty for disturbing the particularly sensitive assembly of individuals gathered to give military honors to a fallen veteran. This PCB amends s. 871.01, F.S., by distinguishing funerals with military honors, as provided for in 10 U.S.C. s. 1491, in subsection (2) and by making it a first degree misdemeanor to willfully interrupt or disturb such a funeral.

A funeral conducted under Military Funeral Honors is provided for in 10 U.S.C. s. 1491. Due to the extraordinarily special nature of a deceased veteran's funeral, the federal government deemed it necessary to codify such honors for any⁹ veteran in recognition of his or her defense of the nation. The provisions of this PCB recognize that since such a funeral receives special recognition from the U.S. Government, it is more egregious to willfully interrupt or disturb such a funeral, and a higher penalty is warranted to deter such activity.

This PCB also reenacts s. 871.02, F.S., which provides the mechanisms for prosecuting violators of s. 871.01, F.S.

C. SECTION DIRECTORY:

- Section 1. Amends s. 871.01, F.S., by distinguishing funerals with military honors, as provided for in 10 U.S.C. s. 1491, in subsection (2) and by making it a first degree misdemeanor to willfully interrupt or disturb such a funeral.
- Section 2. Reenacts s. 871.02, F.S., to extend the prosecutorial mechanisms of this section to the amended version of s. 871.01, F.S., through the continuance of a reference.
- Section 3. Provides that this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There are no known or expected fiscal impacts on state government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on state government expenditures.

⁹ Title 10 U.S.C. s. 985(a) provides certain exceptions to "any" veteran such as, but not limited to, a veteran convicted of a federal or state capital crime.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There are no known or expected economic impacts on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

Section 871.01, F.S., which this PCB amends, is constitutional according to the Florida Supreme Court's decision in S.H.B. v. Florida¹⁰. This PCB does not appear to take the statute outside the constitutional parameters laid forth in the Court's decision.

B. RULE-MAKING AUTHORITY:

This bill does not appear to grant any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹⁰ See Present Situation above.

BILL

ORIGINAL

YEAR

A bill to be entitled

An act relating to the disturbance of assemblies; amending s. 871.01, F.S.; providing a penalty for willfully interrupting or disturbing an assembly of people met for the purpose of acknowledging the death of an individual with a military funeral honors detail; reenacting s. 871.02, F.S., relating to indictments or informations for disturbing assembly, for the purpose of incorporating the amendment to s. 871.01, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 871.01, Florida Statutes, is amended to read:

871.01 Disturbing schools and religious and other assemblies.--

(1) Whoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever willfully interrupts or disturbs any assembly of people met for the purpose of acknowledging the death of an individual with a military funeral honors detail pursuant to 10 U.S.C. s. 1491 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. For the purpose of incorporating the amendment made by this act to section 871.01, Florida Statutes, in a

BILL

ORIGINAL

YEAR

30 reference thereto, section 871.02, Florida Statutes, is reenacted
31 to read:

32 871.02 Indictments or informations for disturbing
33 assembly.--The several grand juries of this state in their
34 respective counties may return indictments or the several state
35 attorneys of the state in their respective circuits may file
36 information against all persons violating s. 871.01, and such
37 indictments or informations, when filed with the clerk of the
38 circuit court in the county where such offense is alleged to have
39 been committed, shall be forthwith certified by the clerk to some
40 court in the county having jurisdiction to try and determine such
41 charge, and said court to which such indictment or information is
42 certified shall proceed to try and determine such charge upon
43 such indictment or information, the same as if affidavit had been
44 made before such court charging the said offense.

45 Section 3. This act shall take effect upon becoming a law.